

OFFICE OF THE ATTORNEY GENERAL

86-00136



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JAN 29 1986

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Honorable Bobby Day
Judge of Probate
Morgan County
Post Office Box 848
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Probate Judges -
Adoption - Petitions

Adoption petitions must be verified only when the child sought to be adopted is under the legal guardianship and permanent custody of the State Department of Pensions and Security or an agency licensed by said Department.

Dear Mr. Day:

In your request for an opinion from the Attorney General you posed the following question:

Is there any provision in the Alabama Code that requires a petition for adoption to be verified, or, may a licensed practicing attorney file a petition on behalf of his client under Title 26, Section 10-1 of the Code of Alabama of 1975, as last amended, without the necessity of said petition being verified by his client?

Honorable Bobby Day
Page Two

The answer to the first part of your question is in the affirmative. Code of Alabama 1975, §36-10-1 (1985 Cum. Supp.) provides:

Any proper adult person, or husband and wife jointly, may petition the probate court...for leave to adopt a child and for a change of the name of such child. Such petition for adoption shall be accompanied by an official copy of the certificate of birth of the child and shall specify the name, age and place of residence of the child, the name, age and place of residence of the petitioner, the name by which the child shall be known, whether such child is possessed of any property and the full description of the property, if any, and whether the child has one or both parents living and, in case one or both are alive, then the name or names and place or places of residence of such father and mother, unless proven to be unknown to the petitioner; provided, that if such child sought to be adopted is by previous order of a court having jurisdiction under the legal guardianship and permanent custody of the state department of pensions and security or of an institution or agency licensed by the said department for the care of children, then the names of parents may be omitted from such petition, in which case the court shall cause such allegation and the petition to be verified. In such cases the copy of the certificate of the birth of the child shall not be required. (Emphasis added.)

The above section requires that petitions to adopt be verified only when the child sought to be adopted is, by previous court order, under the legal guardianship and in the permanent custody of the State Department of Pensions and Security or an agency licensed by the State Department of Pensions and Security.

As noted above, the statute outlines the requirements of a petition to adopt. Verification is not a requirement unless the department or agency mentioned above is the legal guardian and permanent custodian of the child, in which case two of the requirements (that the name of the parents be shown on the petition and that a copy of the birth certificate be attached) are omitted.

Honorable Bobby Day
Page Three

Your question has been addressed by prior opinion from this office. See attached opinion to Honorable John W. Jones, Jr., Judge of Probate, Dallas County, Alabama, under date of August 28, 1981. The attached opinion holds that the term "verified" as used in §26-10-1 is used in the same sense as the term is later used in Code of Alabama 1975, §26-10-2, i.e., "verify" by investigation and report. However, having researched the question once again, this office is now of the opinion that the term "verified" as used in §26-10-1 should not be interpreted in the same sense as used in §26-10-2, but should be interpreted as defined in Black's Law Dictionary 1732 (rev. 4th ed. 1968):

Verify To confirm or substantiate by oath...Particularly used of making formal oath to accounts, petitions, pleading and other papers.

Verification Confirmation of correctness, truth, or authenticity by affidavit, oath or deposition.

In keeping with the above definition and what this office now believes to be the intent of the statute, this office is of the opinion that the term "verify" as used in §26-10-1 should be interpreted to mean the confirmation or certification as to the accuracy and truthfulness of the petition in the situations where verification is required as set out in §26-10-1. To hold that the term "verify" has the same meaning in both sections would make the statute redundant, inasmuch as the Department of Pensions and Security must "verify," by investigation and report, the allegations in all petitions to adopt except those of stepparents or closely related persons enumerated in Code of Alabama 1975, §26-10-7.

The opinion to Honorable John W. Jones, Jr., Judge of Probate, Dallas County, Alabama, under date of August 28, 1981 is modified to the extent that §26-10-1 does require that the court "shall cause" the petitioner to verify the petition in instances in which the child sought to be adopted is, by previous court order, under the legal guardianship and permanent custody of the State Department of Pensions and Security or an institution or agency licensed by said department for the care of children.

Honorable Bobby Day
Page Four

In response to the second half of your question in cases where the petition to adopt must be verified, I find nothing in the adoption statute which requires that the petition must be verified by the client rather than the client's attorney. Although the Alabama Rules of Civil Procedure do not apply to your court, for analogy see Rule 11, ARCP, which reads, in part, as follows:


Every pleading, motion or other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper, and state his address. Except when otherwise specifically provided by rule or statute, pleadings, motions or other papers need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief, there is good ground to support it; and that it is not interposed for delay.

As stated in the committee comments in cases where verification is required, it should be done by the client, rather than the attorney, unless the attorney has personal knowledge of the facts alleged.

I hope this response significantly answers your question. If this office can be of further assistance, please contact us.

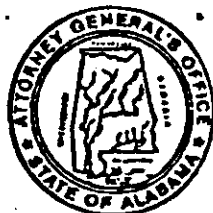
Sincerely,

CHARLES A. GRADDICK
Attorney General
By-


(Mrs.) Mary Lee Stapp
Assistant Attorney General

CAG/MLS/bd

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Honorable John W. Jones, Jr.
Judge of Probate
Dallas County Probate Court
Selma, Alabama 36701

Probate Judges - Adoption -

Literal reading of statute
prescribing contents of adoption
petition requires verification
only when circumstances of
statutory proviso are present.

Dear Judge Jones:

The Attorney General has asked me to respond to your opinion request wherein you inquire as to whether notarization or the attestation of two witnesses is required on a petition for adoption filed under §26-10-1, Code of Alabama 1975.

A literal reading of the statute would seem to require verification of the petition only in circumstances where the child sought to be adopted has been placed in the permanent care and custody of the Department of Pensions and Security by a juvenile court. It is the opinion of this office that the term "verified" as used in §26-10-1, Code of Alabama 1975 is used in the same sense as that term is used in §26-10-2, Code of Alabama 1975. In the latter

Honorable John W. Jones, Jr.
Page Two

section, verification is accomplished through an investigation and report to the Court from the Department of Pensions and Security. Under this interpretation, verification does not mean notarization of the petition. Thus, in those situations where permanent custody has been awarded to the Department of Pensions and Security, neither notarization nor attestation is required under the statute since verification comes in the form of the Department's investigation and report. Under §26-10-3, Code of Alabama 1975, as amended, consent of parents is not required for adoption of minors where permanent custody has been awarded to the Department of Pensions and Security.

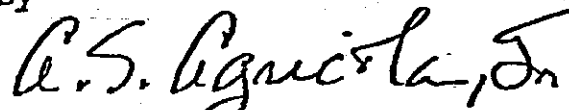
In all other situations, documents including the consent of parents should be authenticated as otherwise required by statute or case law. See §§12-21-60, 12-21-61, Code of Alabama 1975, and Rule 44, Alabama Rules of Civil Procedure.

I hope this answers your question. If I can be of further assistance, please call upon me.

Sincerely yours,

CHARLES A. GRADDICK
ATTORNEY GENERAL

By-



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